

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

United States Courts  
Southern District of Texas  
FILED

9 NOV 2 - 2005

Michael N. Milby, Clerk of Court

KEINON STEWART,  
Plaintiff,

CIVIL ACTION NO.

H 05 - 3741

v.

COLLECTIVE ACTION

WELLS FARGO BANK, N.A.  
Defendant

JURY TRIAL DEMANDED

**ORIGINAL COLLECTIVE ACTION COMPLAINT**

SUMMARY

1. This is a Fair Labor Standards Act (FLSA) case. Defendant WELLS FARGO BANK, N.A. does not pay its employees overtime. Instead the Defendants pay employees at the same hourly rate for all hours worked. For those hours over forty hours, Defendants did not pay overtime pay or, in fact, paid no wages to their employees. Accordingly, Keinon Stewart (Stewart) brings this action on behalf of himself and other similarly situated to recover unpaid overtime wages, liquidated damages and attorneys' fees.

JURISDICTION AND VENUE

2. Stewart's claims arise under § 7(a) (1) of the FLSA. 29 U.S.C. §§ 207(a) (1) and 216(b). Accordingly, this Court has jurisdiction over the subject matter of this action pursuant to 29 U.S.C. § 216(b) and 28 U.S.C. § 1331.

3. The unlawful employment practices alleged in this complaint were committed in the Southern District of Texas. Venue is proper pursuant to 28 U.S.C. section 1391(b) (2).

## THE PARTIES

4. Stewart was an employee of Defendant within the meaning of the FLSA during the three-year period preceding the filing of this action. In performing his duties, Stewart engaged in commerce or in the production, sales and service of goods for commerce. Stewart was regularly scheduled and required to work over forty hours per week. However, Stewart did not receive overtime pay as required by the FLSA. Stewart's consent is attached as Exhibit A.

5. The class of similarly situated employees consists of all current and former hourly employees of the Defendant who were not paid at one and one-half times their regular hourly rates of pay for hours worked in excess of forty. Like Stewart, these persons engaged in commerce or in the production, sales and service of goods for commerce in performing their duties for the Defendant. These similarly situated persons are referred to as "Members of the Class" or "the Class."

6. The Defendant WELLS FARGO BANK, N.A. ("Wells Fargo") is a California company authorized to do business in the state of Texas. Wells Fargo is an enterprise, a bank, engaged in commerce or in the production and service of goods for commerce. Wells Fargo has acted, directly or indirectly, in the interest of an employer with respect to Stewart and the Members of the Class. Wells Fargo may be served with process by serving its registered agent, Corporation Service Company DBA CSC – Lawyers Incorporating Service Company at 701 Brazos Street, Suite 1050, Austin, Texas 78701.

## BACKGROUND

### ***A. Wells Fargo Bank, N.A. Failed to Pay Overtime***

9. Stewart was a fulltime employee of Wells Fargo. He regularly worked over forty hours per week and was paid a flat rate of approximately \$625 per week.

10. Wells Fargo classified Stewart as an exempt employee. However, Stewart was not employed as bona fide executive, administrative, professional and outside sales employees within the meaning of the exemptions provided in Section 13(a)(1) of the FLSA. Moreover, the exemptions provided in Section 13(a)(1) and Section 13(a)(17) for certain computer employees are also inapplicable.

11. As a nonexempt hourly employee who was inaccurately designated as an exempt employee, Stewart was entitled to wages at one-and-one-half times his regular hourly rate for all hours worked in excess of forty in a given workweek. 29 U.S.C. § 207(a). Wells Fargo, however, failed to pay Stewart for all hours worked in excess of forty hours at one-and-one-half times his regular rate. Instead, Wells Fargo systematically denied Stewart his proper overtime wages by not paying him the proper rate for hours worked in excess of forty hours.

***B. Wells Fargo Bank, N.A. Willfully Violated the FLSA***

12. Wells Fargo practice of not paying overtime was and is in violation of the FLSA. Wells Fargo has not made a good faith effort to comply with the FLSA. No exemption excused Wells Fargo from paying Stewart at his overtime rate for all overtime hours worked. Wells Fargo knowingly, willfully or with reckless disregard carried out their illegal practice of failing to pay overtime.

**COLLECTIVE ACTION ALLEGATIONS**

13. Other employees have been victimized by Wells Fargo's system of failing to pay overtime which is a willful violation of the FLSA. Some of these employees have worked with Stewart and have reported that they were not paid overtime. Thus, from these discussions with these employees, Stewart is aware that the illegal practices or policies of Wells Fargo have been imposed on the Members of the Class.

14. The Members of the Class performed job duties that were similar to those of Stewart. Moreover, these non-exempt employees regularly worked more than forty hours in a workweek without receiving overtime compensation. Accordingly, the employees victimized by Wells Fargo's unlawful practices are similarly situated to Stewart in terms of job duties.

15. Wells Fargo's failure to pay overtime compensation at the rates required by the FLSA results from generally applicable policies and practices and do not depend on the personal circumstances of the Members of the Class. Thus, Stewart's experience is typical of the experience of the Members of the Class.

16. The specific job titles or precise job requirements of the various Members of the Class do not prevent collective treatment. All Members of the Class, regardless of their precise job requirements or rates of pay, are entitled to overtime compensation for hours worked in excess of forty.

17. The damages suffered by each Member of the Class arise from the same common nucleus of operative fact. Moreover, the damages owed to each Member of the Class can be calculated by using one simple mathematical formula which applies to each Member of the Class. In other words, though individual damages may vary in amount, the method of calculating damages for the Members of the Class is identical. The Class is therefore properly defined as:

All current and former hourly employees who were employed by Wells Fargo Bank, N.A. at any time during the period November 2, 2002 to present.

#### CAUSES OF ACTION

18. Stewart and the Members of the Class incorporate by reference all allegations contained in paragraphs 1 through 17.

19. Wells Fargo's failure to pay overtime to Stewart and the Members of the Class was and is in violation of FLSA. 29 U.S.C. § 207. Accordingly, Stewart and the Members of the Class are entitled to their unpaid overtime in an amount equal to one-half their regular rates of pay for each hour over forty in a workweek.

20. Additionally, Stewart and the Members of the Class are entitled to an amount equal to all their unpaid wages as liquidated damages, as well as reasonable attorneys' fees and costs of this action as provided by the FLSA. 29 U.S.C. §216(b).

**JURY DEMAND**

21. In accordance with Rule 38(b) of the Federal Rules of Civil Procedure, Stewart demands a trial by jury.

**PRAYER FOR RELIEF**

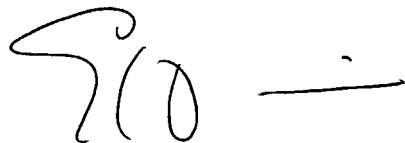
WHEREFORE, Stewart respectfully prays that this Court award Stewart and the Members of the Class judgment against Wells Fargo for:

1. Damages for the full amount of their unpaid overtime compensation;
2. An equal amount as liquidated damages;
3. Reasonable attorneys' fees, costs and expenses of this action;
4. Pre-judgment and post-judgment interest at the highest rate allowable by law; and
5. Such other relief as may be allowed by law.

Respectfully submitted,

**DAVIS & ASSOCIATES, P.L.L.C.**

By: \_\_\_\_\_



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Telephone (713) 227-2727  
Facsimile (713) 227-2827

**Mail to: Wells Fargo Overtime Action  
1314 Texas Avenue, Suite 806  
Houston, Texas 77002**

## CIVIL COVER SHEET

United States District of Texas  
FILED

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

KEINON STEWART

(b) County of Residence of First Listed Plaintiff Harris County

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)  
Eric Davis, 1314 Texas Avenue, Suite 806, Houston, TX 77002

Attorneys (If Known)

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## DEFENDANTS

WELLS FARGO BANK, N.A.

Michael N. Milby, Clerk of Court

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

## II. BASIS OF JURISDICTION

(Place an "X" in One Box Only)

☐ 1 U.S. Government Plaintiff☒ 3 Federal Question (U.S. Government Not a Party)☐ 2 U.S. Government Defendant

(Indicate Citizenship of Parties in Item III)

☐ 4 Diversity

Citizen of Another State

Citizen or Subject of a Foreign Country

Citizen of This State

Incorporated or Principal Place of Business in This State

Incorporated and Principal Place of Business in Another State

Foreign Nation

3 ☐2 ☐1 ☐6 ☐5 ☐4 ☐3 ☐2 ☐1 ☐6 ☐5 ☐4 ☐3 ☐2 ☐1 ☐6 ☐5 ☐4 ☐3 ☐2 ☐1 ☐6 ☐5 ☐4 ☐3 ☐2 ☐1 ☐6 ☐5 ☐4 ☐3 ☐2 ☐1 ☐

## IV. NATURE OF SUIT

(Place an "X" in One Box Only)

☐ 110 Insurance☐ 120 Marine☐ 130 Miller Act☐ 140 Negotiable Instrument☐ 150 Recovery of Overpayment☐ 160 Recovery of Judgment☐ 170 Medicare Act☐ 180 Recovery of Defaulted☐ 190 Student Loans☐ 200 (Excl. Veterans)☐ 210 Recovery of Overpayment☐ 220 Veterans' Benefits☐ 230 Stockholders' Suits☐ 240 Other Contract☐ 250 Contract Product Liability☐ 260 Franchise☐ 270 Real Property☐ 280 Land Condemnation☐ 290 Foreclosure☐ 300 Rent Lease & Ejectment☐ 310 Torts to Land☐ 320 Torts to Real Property☐ 330 All Other Real Property☐ 340 Other Civil Rights☐ 350 Other☐ 360 Amer. w/Disabilities☐ 370 Employment☐ 380 Amer. w/Disabilities☐ 390 Mandamus & Other☐ 400 Death Penalty☐ 410 General☐ 420 Habeas Corpus☐ 430 Sentences☐ 440 Motions to Vacate☐ 450 Other Labor Litigation☐ 460 Railway Labor Act☐ 470 Other Labor Litigation☐ 480 Security Act☐ 490 Fair Labor Standards Act☐ 500 Other Labor Litigation☐ 510 Fair Labor Standards Act☐ 520 Other Labor Litigation☐ 530 Security Act☐ 540 Fair Labor Standards Act☐ 550 Other Labor Litigation☐ 560 Security Act☐ 570 Fair Labor Standards Act☐ 580 Other Labor Litigation☐ 590 Security Act☐ 600 Fair Labor Standards Act☐ 610 Other Labor Litigation☐ 620 Security Act☐ 630 Fair 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